

TIVERTON ZONING BOARD OF REVIEW
SPECIAL MEETING
SHOW CAUSE HEARING

April 8, 2008
7:30 p.m.

The following Special Meeting of the Tiverton Zoning Board of Review was conducted on Tuesday, April 3, 2008 at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, Jay Jackson, Richard Taylor, Lise Gescheidt and Susan Krumholz.

Also present were: Wyatt A. Brochu, Town Solicitor, Sally Ferreira, Court Reporter and Gareth Eames, Building/Zoning Official.

1. Notice is hereby given that a Show Cause Hearing to revoke the license issued pursuant to Chapter 38 Article III for an alleged violation of the same article will be held pursuant to Section 38-57 on April 8, 2008 at a special meeting of the Tiverton Zoning Board of Review at 7:30 p.m. at 343 Highland Road, Tiverton, Rhode Island on violations of the Tiverton Code for the Viking Stone Corporation located at 1635 Fish Road, Tiverton, Rhode Island.

DECISION: Attorney Jeanne Scott representing the Building/Zoning Official came before the Board and stated after a brief conference that was held with Attorney Stetson Eddy, counsel for Viking Stone Corp., and Mr. Eames, the town is recommending that we continue this hearing until May 7th.

Ms. Scott also stated the cease and desist quarry operation is to remain in effect that during that period of time Viking Stone has requested that they be allowed to continue to work with their engineer Bill Smith in order to come up with a solution that will bring them into compliance with regard to the water drainage issues and soil erosion plan. Ms. Scott informed the Board in speaking with Mr. Eames he was comfortable with that recommendation. Viking Stone would be able to crush rocks that they are not quarrying; however, they would not be able to do any blasting or quarrying for those 30 days. Ms. Scott stated if there was a violation of the cease and desist order between now and May 7th, the town is not precluded by coming back in front of this Board and going forward with the request to have the license revoked.

Chairman Mr. Collins asked if the town is looking for an engineering design in 30 days or is the town looking for a fix in 30 days and Ms. Scott answered apparently the licensee has been working on a possible fix but needs more time. The Chairman asked Mr. Eddy if he was in agreement and Mr. Eddy responded in the affirmative.

The Chairman asked the Board whether or not the meeting should be open up to public discussion in order to answer questions from the audience. Ms. Gescheidt stated a lot of people came out here tonight to express their thoughts and she would be in favor of hearing what the public has to say because they are the ones most affected by the Board's decision. Mr. Jackson stated they're the neighborhood. Mr. Taylor stated a lot of people took time to write letters, to come tonight and they gave up their evening. Mr. Jackson made a motion to open the discussion to the public and Ms. Gescheidt seconded. The vote was unanimous. Voting were: Chairman David Collins, Jay Jackson, Ms. Gescheidt, Mr. Taylor and Ms. Krumholz.

At this point, the hearing was open for discussion on the matter of a continuation. Numerous neighbors were sworn in and gave testimony. Steven Balucci the Director of Public Works for Tiverton came before the Board and stated a 30 day extension is not going to relieve the possibility of flooding on the road. Mr. Balucci went on to say this flooding causes serious traffic hazards and there's not much the DPW can do except close the road. Mr. Balucci also stated the road is being damaged by the weight and the erosion.

In response to the DPW Director's comments, Mr. Eddy stated the level of water has come up because Viking Stone has released water from the dam system they have and they are not trying to flood the road but are trying to release the pressure so it won't get flooded when there's the next torrential rain.

Police Chief Thomas Blakely stated his concern is public safety. He suggested a temporary solution might be when there is flooding in that area to place a police cruiser on each side manned by police officers at the expense of the owner to keep the traffic flowing to the police station. After a short discussion with his client, Attorney Eddy stated his client was in agreement to that suggestion.

Bill Smith of Concept Engineering retained by the licensee came before the Board and stated it's a difficult site because you have runoff from the road, runoff from the surrounding area and runoff from the quarry. Mr. Smith went on to say they are in the process of getting aerial photographs done to have a current baseline to go by of the contours of the existing area and as soon as that's completed, they can get a design submitted. Mr. Smith further stated in the meantime Mr. Mello has agreed to have a pump on hand in the event the water starts to come up close to the level of the road and it would be pumped into the swale just to the north of the site. There's a culvert from there that crosses from the west side of the road to the east side of the road to a wetland area.

The Chairman asked the Board to decide whether they should go ahead and hear the request for revocation or accept the recommendation of the attorneys to allow the cease and desist order to continue for one month while they work out a solution. Mr. Taylor made a motion to conduct the Show Cause Hearing as scheduled. Ms. Gescheidt

seconded. The vote was unanimous. Voting were: Chairman David Collins, Mr. Jackson, Ms. Gescheidt, Mr. Taylor and Ms. Krumholz.

At this point, a short break was taken to allow the stenographer a chance to rest. The hearing was reconvened at 9 o'clock at which time Ms. Scott called Gareth Eames, the Building/Zoning Official to testify. Mr. Eames gave extensive testimony and Mr. Eddy cross-examined. Ms. Scott called the DPW Director Steven Balucci and the Police Chief Thomas Blakely to testify. They each gave testimony and Mr. Eddy had the opportunity to cross-examine. Numerous exhibits were marked as evidence.

Mr. Eddy called Bill Smith to testify and exhibits were marked as evidence. Mr. Smith gave extensive testimony and Ms. Scott cross-examined. Mr. Frank Mello the owner of the property was called to testify and gave extensive testimony. Ms. Scott had the opportunity to cross-examine.

In summary, Mr. Eddy stated that his client wants to correct the problem and are asking for the additional time to do so for the benefit of both the town and the neighbors and the people who travel on Fish Road.

In summary, Ms. Scott stated there is no question that there is noncompliance with regard to drainage and there is no question that there's been blatant disregard to the ordinances of the town causing the town to incur costs in labor and material. She also stated the Board has the authority pursuant to 38-57 to revoke this license for this violation notice.

Ms. Gescheidt stated that it's certainly been proved that the licensee's water runoff issue has been on-going and consistent as well as sediment issues and their multiple failures to comply with cease and desist orders. Ms. Gescheidt also stated the Board was told that the delay was because it takes time to get DEM to make a decision but there is no DEM applications pending. There's no soil erosion plans that's been put into effect and there are no applications for any permits. Ms. Gescheidt further stated the licensee's actions are causing a public safety hazard. Ms. Gescheidt made a motion to revoke their license under these reasons. Mr. Taylor stated the problem cannot be fixed in the next 30 days, therefore, he seconded the motion to revoke the license. The vote was unanimous. Voting were: Chairman David Collins, Mr. Taylor, Ms. Gescheidt, Mr. Jackson and Ms. Krumholz.

Whereupon the Special Meeting of the Tiverton Zoning Board of Review Show Cause Hearing was concluded at 10:50 p.m.

ZBR/ssf

C E R T I F I C A T E

I, Salvina S. Ferreira, Registered Professional Reporter, hereby certify that the foregoing pages 1 - 4 of minutes in the matter of Show Cause Hearing at a special meeting of the Zoning Board of Review held on Tuesday, April 8, 2008, are transcribed to the best of my knowledge, skill and ability.

I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 2nd day of May, 2008.

Salvina S. Ferreira, RPR

My commission expires: September 26, 2009.

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